



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[PS Docket No. 15-94; FCC 15-77]

Amendment of the Commission's Rules Regarding the Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) seeks comment on proposed changes to its rules governing the Emergency Alert System (EAS) to incorporate three new event codes into and revise two geographic location codes identified in the EAS rules.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments are due on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by EB Docket No. 04-296 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Federal Communications Commission's Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- People with Disabilities: Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or

phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Lisa Fowlkes, Deputy Bureau Chief, Public Safety and Homeland Security Bureau, at (202) 418-7452, or by email at Lisa.Fowlkes@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in PS Docket No. 15-94, FCC 15-77, adopted on July 8, 2015, and released on July 10, 2015. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554.

The full text may also be downloaded at: www.fcc.gov.

Synopsis of the NPRM

1. In the NPRM, the Federal Communications Commission (FCC or Commission) proposes to revise the Emergency Alert System (EAS) rules, as set forth in a letter and subsequent comments filed by the National Weather Service (NWS) of the National Oceanic and Atmospheric Administration (NOAA). Specifically, NWS requests that the Commission add three new EAS event codes, covering extreme wind and storm surges, as well as revise the territorial boundaries of the geographic location codes for two offshore marine areas listed in the EAS rules as location codes 75 and 77. The Commission agrees with NWS that targeted, specific warnings “will help the public and emergency officials better respond to local threat(s).”

I. BACKGROUND

2. The EAS is a national public warning system through which broadcasters, cable systems, and other service providers (EAS Participants) deliver alerts to the public to warn them of impending emergencies and dangers to life and property. The primary purpose of the EAS is to provide the President with “the capability to provide immediate communications and information to the general public at the national, state and local levels during periods of national emergency.” The EAS also is used by state and local governments, as well as NWS, to distribute alerts. According to NWS, about 90 percent of all EAS

activations are generated by NWS and relate to short-term weather events. The Commission, the Federal Emergency Management Agency (FEMA), and the NWS implement the EAS at the federal level. The EAS is a broadcast-based, hierarchical alert message distribution system through which an alert message originator at the local, state or national level encodes (or arranges to have encoded) a message in the EAS Protocol, which provides basic information about the emergency involved. The message is then broadcast by one or more EAS Participants and subsequently relayed from one station to another until all affected EAS Participants have received the alert and delivered it to the public. This process of EAS alert distribution among EAS Participants is often referred as the “daisy chain” distribution architecture.

3. The EAS Protocol utilizes fixed codes to identify various aspects of the alert. Of particular relevance to this NPRM, the EAS Protocol utilizes a three-character “event code” to describe the nature of the alert (e.g., “TOR” signifies tornado). The EAS Protocol identifies “National” event codes, such as the EAN and National Periodic Test (NPT), which EAS Participants use as part of required Presidential alerts and tests, and “State and Local” event codes, such as TOR, which EAS Participants use when they deliver weather and other voluntary alerts. In addition, the EAS Protocol utilizes six-digit numerical location codes to identify the geographic area(s) to which the alert applies, two digits of which, the “SS” codes, indicate the state, territory, or, in this case, the offshore marine area to which the alert applies. Unlike the state and territory geographic location codes, which are based on the American National Standards Institute (ANSI) standard, the codes assigned to the offshore marine areas were created by the NWS and adopted by the Commission in 2002 at NWS’s request.

II. DISCUSSION

A. Proposed EAS Event Codes

4. NWS requests that the Commission add a new “Extreme Wind Warning” (EWW) event code to provide the public with advance notice of the onset of extreme sustained surface winds (greater than or equal to 115 miles per hour) associated with a major land-falling hurricane (category 3 or higher). NWS explains that use of the “Tornado Warning” (TOR) event code, then the only available code to warn of high winds, caused confusion when used to warn of Hurricane Charley’s high winds in 2004. NWS

states that although it started using the EWW code during the 2007 hurricane season, EAS Participants are “reluctant to add and relay the new [e]vent [c]ode via the EAS, fearing FCC adverse action without addition of the new EWW Event Code to the Part 11.” According to NWS, no other existing EAS event code is adequate or acceptable to activate the EAS for an extreme wind warning. Although section 11.31 of the rules contains other codes regarding hurricanes (i.e., HUW for Hurricane Warning, HUA for Hurricane Watch, HLS for Hurricane Statement), those codes apply generally to the hurricane event itself, and are not specifically tailored to warn of extreme sustained surface winds associated with a (Category 3) hurricane.

5. NWS also requests that the Commission add two new event codes covering storm surges: “Storm Surge Watch” (SSA) and “Storm Surge Warning” (SSW). NWS indicates that the “Storm Surge Watch/Warning will be issued when there is a significant risk of life-threatening inundation from rising water moving inland from the ocean.” In the event of a storm surge, a watch (SSA) would be issued 48 hours in advance of the event taking place and a warning (SSW) would be issued 36 hours in advance of the event, and will help to mitigate damage from storm surge, the leading cause of death in tropical cyclones.

6. In support of its request, NWS notes that it currently does not explicitly issue warnings for storm surge, notwithstanding that the National Hurricane Center (NHC) has vigorously advocated for a storm surge watch and storm surge warning for a number of years. The NWS explains that, according to the NHC, “storm surge losses in the hundreds or thousands of lives have occurred in every coastal state from Texas to South Carolina, and in some states north of there.” NWS explains that “[w]hile the threatening winds of a hurricane are important, most deaths from tropical cyclones result from storm surge.” NWS further explains that “current Hurricane Watch/Warning does not provide clear or sufficient information to allow citizens to determine if they are threatened by wind or storm surge or both.” NWS notes that issuing storm surge watch/warning conditions is supported by both the NHC and FEMA, and that storm surge warnings are utilized by the government meteorological services of other nations, such as Environment Canada, and that use of such warnings has been advocated by the World Meteorological

Organization for member nations. Accordingly, the NWS requests that the Commission revise its EAS rules to add Storm Surge Watch and Warning codes so that the NWS may offer these alerts to the public.

7. The Commission proposes adding both the extreme wind warning and storm surge event codes to section 11.31(e) of the Commission's rules, thus authorizing their use by EAS Participants. The Commission believes that extreme wind and storm surge events pose significant dangers to human health and property, dangers that the Commission's current EAS rules are not designed to prevent. The Commission observes that not revising the EAS rules to allow the NWS to warn the public of these events risks unnecessary harm to the public, a risk inconsistent with the Commission's statutory mandate of "promoting the safety of life and property through the use of wire and radio communication." The Commission thus tentatively concludes that the event codes NWS proposes could promote public safety by saving lives and reducing the potential for injuries and damage to property. The Commission seeks comment on this tentative conclusion.

8. On a more granular level, the Commission seeks comment on whether the addition of the EWW, SSA, and SSW event codes would promote the public interest by enabling the public to deal more effectively with emergency situations, and, if so, how the specificity added by use of the codes would assist the public in these regards. The Commission observes that the NWS previously documented the confusion associated with using the TOR event code for non-tornados in its Service Assessment of the response to Hurricane Katrina. According to the Service Assessment, use of the TOR event code for events other than tornados also can lead to inconsistent or incorrect advice. The standard advice associated with the TOR event code directs people to take shelter in "an interior room of the lowest floor" of a building, but during Hurricane Katrina, the TOR warnings were issued for counties at risk for storm surge flooding. Local alerts originating in Miami describing the potential flooding hazard directed people "to go to the highest floor of a building." The Commission seeks comment on whether the addition of these weather-related event codes will address the potential for confusion or incorrect guidance that might otherwise result from the continued use of the TOR event code.

9. The Commission also seeks comment regarding the extent to which these new event

codes will help promote safety of life and property. With respect to Hurricane Katrina, for example, NWS states that “[a]t least [1,500] people lost their lives during Katrina, and many of those deaths occurred because of storm surge, either directly or indirectly.” In addition, NWS states that “Katrina also caused well over \$100 billion in damage from its surge and winds.” The Commission also notes that a recent analysis of data from Atlantic tropical cyclones occurring from 1963-2012 indicates that 49 percent of all deaths directly attributable to those events were caused by storm surge. Further, storm surge damage is not limited to coastal areas. According to NHC data, for example, the storm surge (measured as water height above normal astronomical tide level) experienced in New York State during Hurricane Sandy reached 9.4 feet in the Battery on the southern tip of Manhattan, and caused (with some contribution from rainfall) significant flooding in parts of the Hudson River Valley as far north as Albany (located approximately 130 miles from Manhattan). Moreover, data suggests that storm surges may become more severe over time. The National Center for Atmospheric Research indicates that an increase to the global average temperature would result in “increasingly dramatic storm surges that, combined with higher water levels, [would] increase risk of damage to coastal infrastructure, society, and economies.” The Commission believes that the addition of EWW, SSA and SSW to the event codes in section 11.31(e) of the rules would serve the public interest by providing more specific information regarding the emergency event. The Commission seeks comment on this analysis. The Commission observes that NWS indicates that broadcasters, emergency management offices and federal agencies support the need to establish specific EAS warning alerts for these conditions, and invites these entities in particular to submit their updated views on these issues.

10. The Commission also seeks comment on the costs for implementing the proposed event codes. NWS states that the additional costs associated with the addition of these new event codes will be minimal and can generally be added through a firmware and/or software update. Several EAS equipment manufacturers confirm NWS’s contentions. Trilithic Inc. (Trilithic), for example, states that, for its two EAS encoder/decoder models currently deployed in the field, the event codes can be added through a software update, adding that “[t]he modifications are minimal and there would be no cost passed onto our

customers.” Monroe Electronics, Inc. (Monroe), states that the event codes could be implemented in its EAS device models through a software update, “downloaded by users from Monroe’s secure site, and applied to each EAS device by the user, with basic instructions provided by Monroe or its Digital Alert Systems subsidiary.” Similarly, Sage Alerting Systems, Inc. (Sage), states that end users could implement the proposed event codes by downloading a settings file. The Commission tentatively concludes that the costs for implementing the proposed event codes will be nominal to manufacturers and either nominal or non-existent for EAS participants. The Commission seeks comment on this tentative conclusion and the costs for individual EAS Participants.

11. The Commission notes that Sage observes that one of its EAS device models in the field can no longer support software updates and, therefore, presumably cannot be updated with the proposed event codes. The Commission seeks comment on how this might affect the adoption of these additional event codes and to what extent this device model is being used by EAS Participants. How do the costs associated with implementing these event codes compare with the benefit that might result from their implementation?

12. Finally, the Commission seeks comment generally on whether it should make any other changes to the event codes currently set forth in the EAS Protocol. Are the event codes proposed by NWS the right event codes? Is there a better way to address the issues identified by NWS than these proposed changes?

B. Proposed Geographic Location Code Revisions

13. NWS requests that the Commission revise the areas defined in the geographic location codes identified in section 11.31(f) of the EAS rules as location codes 75 and 77, which cover offshore marine areas. These location codes, and their defined areas, like all of the Offshore (Marine Areas) location codes contained in the EAS Protocol, were originally adopted in 2002 pursuant to a request by NWS. Currently, the marine area defined for location code 75 covers “Western North Atlantic Ocean, and along U.S. East Coast, south of Currituck Beach Light, N.C., following the coastline into Gulf of Mexico to Bonita Beach, FL, including the Caribbean,” while location code 77 covers “Gulf of Mexico,

and along the U.S. Gulf Coast from the Mexican border to Bonita Beach, FL.” NWS indicates that it has changed the end point it uses for generating weather alerts for both of these areas from Bonita Beach, FL, to Ocean Reef, FL, and, accordingly, requests that the area covered by location code 75 be changed to “Western North Atlantic Ocean, and along U.S. East Coast, south of Currituck Beach Light, NC, following the coastline to Ocean Reef, FL, including the Caribbean,” and that the area covered by location code 77 be changed to “Gulf of Mexico, and along the U.S. Gulf Coast from the Mexican border to Ocean Reef, FL.” According to the NWS, allowing the EAS rules to contain definitions for the two offshore location codes that are inconsistent with the definitions that NWS has implemented for issuing its alerts may cause confusion for broadcasters, the emergency management community and the maritime commerce community, particularly when tropical storm and hurricane watches and warnings are issued for southern Florida. NWS notes that it has checked with several EAS encoder/decoder manufacturers, and was informed that the cost and time to make the requested change would be nominal.

14. The Commission proposes revising section 11.31 of its rules to adopt the definitional changes for location codes 75 and 77. As indicated above, location codes 75 and 77 were added as location codes in 2002 pursuant to a request by NWS, and this proposed rule change amounts to a modification of a location definition created and primarily used by the NWS. The Commission observes that, like all the Offshore (Marine Areas) location codes, location codes 75 and 77 are used with the Special Marine Warning (SMW) event code, among others, and thus are vital to maintaining the efficiency of marine operations and safety of vessels and their crews. The Commission also observes that NWS has indicated that it is already applying the revised definitions for location codes 75 and 77 in the field, which suggests a potential for confusion among EAS Participants, the emergency management community and the maritime commerce community in a major hurricane corridor of the United States if the definitions for these location codes currently identified in section 11.31(f) are not harmonized with NWS’s usage. The Commission also proposes revising footnote 1 of section 11.31 to delete the reference to a past deadline and to clarify that the numbers assigned to the offshore marine areas listed in the table of geographic areas in section 11.31(f), while consistent with the format of the state and territory location

codes derived from the ANSI standard, are not a product of that standard, but rather were assigned by the NWS.

15. With respect to cost considerations, NWS states that it has checked with several EAS encoder/decoder manufacturers, and was informed that the cost and time to make the requested change would be nominal. Recent submissions by EAS equipment manufacturers suggest that the costs to EAS Participants for implementing these changes in their EAS equipment – like the event codes discussed in the previous section – are likely to be de minimis. For example, Sage states that end users could implement the proposed event codes discussed above, as well as the revised offshore location definitions by downloading a settings file and firmware update, respectively, the entire implementation process of which would take “10 minute[s] or less.” Similarly, Monroe states that the location codes can be added to its equipment via a software update, as does Trilithic, which adds that such update would be available at no charge.

16. The Commission seeks comment on its proposal to revise the geographic descriptions for location codes 75 and 77, as requested by NWS. Is such action necessary to prevent or ameliorate potential confusion among broadcasters, the emergency management community and the maritime commerce community that might otherwise exist if the current descriptions for these location codes in section 11.31(f) were left unchanged and continued to diverge from present usage by NWS? Would the proposed amendments to location codes 75 and 77 enhance the efficiency of marine operations and safety of vessels and their crews, and otherwise benefit the public? With respect to costs, the Commission seeks comment on whether the costs of implementing these proposed revisions to the location codes would be de minimis, as EAS equipment manufacturers suggest. Are there any EAS device models deployed by EAS Participants located in coastal geographic areas, in particular, that could not be updated to reflect these revisions?

C. Implementation Schedule

17. The Commission believes that the prompt deployment of alerts using these new codes is consistent with the safety of the public in affected areas. The Commission realizes that in order to ensure

the full distribution to an affected community of an alert that uses one of these new codes, all EAS participants in the EAS distribution relay chain for that community must have equipment that is programmed to receive and process the new codes. Accordingly, the Commission proposes that EAS equipment manufacturers integrate these codes into equipment yet to be manufactured or sold, and make necessary software upgrades available to EAS Participants no later than six months from the effective date of any rules adopted as a result of this notice. The Commission also would encourage State Emergency Coordination Committees (SECCs) to update their state and local EAS plans and to take any other steps necessary to ensure the smooth implementation of these new codes within their states (e.g., by encouraging key sources which relay EAS messages to obtain the upgrades promptly). Would these measures help ensure that all EAS Participants have the capability of updating their EAS equipment and of delivering alerts using these new codes to the public, such that the alert is successfully distributed throughout the EAS distribution relay chain? To ensure that all relevant alerts are received by their intended audiences, would it be helpful if, for an interim transitional period, NWS issued any alert that uses one of the new event codes concurrent with an alert that uses the current event code? Would this help ensure that all EAS alerts reach their intended audience until the new codes are fully integrated into EAS architecture? Would it be reasonable to expect that all EAS Participants would voluntarily integrate the new codes within their systems no later than one year from the effective date of any such rules, such that one year would provide an adequate transition period for NWS to issue concurrent alerts?

The Commission believes that enabling these codes in this timeframe will not unduly burden EAS Participants or EAS equipment manufacturers. The Commission notes that the record indicates that most EAS device models already are capable of processing these codes, or can be made to do so with minor software modifications. Further, as the Commission has clarified previously, modifications to authorized EAS equipment that are necessary to implement revisions to the EAS event codes and location codes may be implemented as Class I permissive changes that do not require prior authorization to be implemented. Accordingly, the Commission suggests that the implementation schedule proposed herein would afford a

reasonable period of time and would not present any undue burden. The Commission seeks comment on this conclusion.

III. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

18. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in section IV of that item. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.

Need for, and Objectives of, the Proposed Rules

19. In this NPRM, the Commission proposes to add three new Emergency Alert System (EAS) Event Codes, covering extreme wind (“Extreme Wind Warning”) and storm surges (“Storm Surge Watch” and “Storm Surge Warning”), and proposes to revise the territorial boundaries of geographic location codes 75 and 77 used by the EAS. These proposed rule revisions would seek to improve the capacity of the EAS to warn the public of impending threats to life and property, and ensure that the geographic definitions of location codes 75 and 77 utilized by the EAS are harmonized with those employed by the NWS.

Legal Basis

20. Authority for the actions proposed in this NPRM may be found in sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

21. The RFA directs agencies to provide a description of and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Below is a description and estimate the number of small entity licensees that may be affected by the adopted rules.

22. Small Businesses, Small Organizations, and Small Governmental Jurisdictions. The Commission’s action may, over time, affect small entities that are not easily categorized at present. The Commission therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA. As of 2011, small businesses comprise 99.7 percent of all employer firms in the US. In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,506 entities may qualify as “small governmental jurisdictions.” Thus, the Commission estimates that most governmental jurisdictions are small.

23. Radio Stations. This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in the station’s own studio, from an affiliated network, or from an external source. The SBA defines a radio broadcasting entity that has \$38.5 million or less in annual receipts as a small business. According to Commission staff review of the BIA Kelsey Inc. Media Access Radio Analyzer Database as of June 5, 2013, about 90 percent of the 11,340 of commercial radio stations in the United States have revenues of

\$38.5 million or less. Therefore, the majority of such entities are small entities. The Commission has estimated the number of licensed noncommercial radio stations to be 3,917. The Commission do not have revenue data or revenue estimates for these stations. These stations rely primarily on grants and contributions for their operations, so the Commission will assume that all of these entities qualify as small businesses. The Commission note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. In addition, to be determined to be a “small business,” the entity may not be dominant in its field of operation. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and the Commission’s estimate of small businesses may therefore be over-inclusive.

24. Low-Power FM Stations. The same SBA definition that applies to radio broadcast licensees would apply to low power FM (“LPFM”) stations. The SBA defines a radio broadcast station as a small business if such station has no more than \$38.5 million in annual receipts. Currently, there are approximately 864 licensed LPFM stations. Given the nature of these services, the Commission will presume that all of these licensees qualify as small entities under the SBA definition.

25. Television Broadcasting. The SBA defines a television broadcasting station that has no more than \$38.5 million in annual receipts as a small business. Business concerns included in this industry are those primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in the station’s own studio, from an affiliated network, or from an external source.

26. According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of March 31, 2013, about 90 percent of an estimated 1,385 commercial television stations in the United States have revenues of \$38.5 million or less. Based on this data and the associated size standard, the Commission concludes that the majority of such establishments are small. The Commission has estimated the number of licensed noncommercial educational (“NCE”) stations to

be 396. The Commission does not have revenue estimates for NCE stations. These stations rely primarily on grants and contributions for their operations, so the Commission will assume that all of these entities qualify as small businesses. In addition, there are approximately 567 licensed Class A stations, 2,227 licensed low-power television (“LPTV”) stations, and 4,518 licensed TV translators. Given the nature of these services, the Commission will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

27. The Commission notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission estimate, therefore, likely overstates the number of small entities affected by the proposed rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

28. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of “small business” is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and the Commission’s estimates of small businesses to which they apply may be over-inclusive to this extent.

29. Cable and Other Subscription Programming. This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA size standard for this industry establishes as small any company in this category which receives

annual receipts of \$38.5 million or less. Based on U.S. Census data for 2007, in that year 659 establishments operated for the entire year. Of that 659, 197 operated with annual receipts of \$10 million a year or more. The remaining 462 establishments operated with annual receipts of less than \$10 million. Based on this data, the Commission estimates that the majority of establishments operating in this industry are small.

30. Cable System Operators (Rate Regulation Standard). The Commission has also developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Industry data shows that there were 1,141 cable companies at the end of June 2012. Of this total, all but 10 incumbent cable companies are small under this size standard. In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,945 cable systems nationwide. Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, the Commission estimates that most cable systems are small.

31. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." There are approximately 56.4 million incumbent cable video subscribers in the United States today. The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission notes that the FCC neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, the Commission is unable at this time to estimate with greater precision the number of

cable system operators that would qualify as small cable operators under the definition in the Communications Act.

32. Satellite Telecommunications. The Commission has not developed a small business size standard specifically for providers of satellite service. The SBA definition of small Satellite Telecommunications entities comprises those that have \$32.5 million or less in average annual receipts. For this category, Census Bureau data for 2007 show that there were a total of 512 satellite communications firms that operated for the entire year. Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by the Commission's action.

33. Other Telecommunications. This category includes "establishments primarily engaged in . . . providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems." The SBA definition of Other Telecommunications entities comprises those that have \$32.5 million or less in average annual receipts. For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under \$25 million and 37 firms had annual receipts of \$25 million to \$49,999,999. Consequently, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by our action.

34. The Educational Broadcasting Services. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a

combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services.” The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the Commission estimates that the majority of businesses can be considered small entities. In addition to Census data, the Commission’s internal records indicate that as of September 2014, there are 2,207 active EBS licenses. The Commission estimates that of these 2,207 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

35. Broadband Radio Service. Broadband Radio Service (“BRS”) systems, also referred to as Multipoint Distribution Service (“MDS”) and Multichannel Multipoint Distribution Service (“MMDS”) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the BRS and Educational Broadband Service (“EBS”). In connection with the 1996 BRS auction, the Commission established a “small business” as an entity that had annual average gross revenues of no more than \$40 million in the previous three years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (“BTAs”). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules. In 2009, the Commission conducted Auction 86, which resulted in the licensing of 78 authorizations in the BRS areas. The Commission offered three levels of bidding credits: (i) a

bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid.

Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

36. Direct Broadcast Satellite (“DBS”) Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS, by exception, is now included in the SBA’s broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small. However, the data the Commission has available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled “Cable and Other Program Distribution.” The definition of Cable and Other Program Distribution provided that a small entity is one with \$12.5 million or less in annual receipts. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network. Each currently offers subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, the Commission believes it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

37. None.

Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

38. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.”

39. The rule changes contemplated by the NPRM would implement certain EAS warning codes and location code definitional changes that are unique, and implemented by small entity and larger-sized regulated entities on a voluntary basis. Thus, the NPRM does not propose mandated burdens on regulated entities of any size. Moreover, the costs associated with voluntarily implementing the codes contained in the proposed rule changes are expected to be de minimis or non-existent. Commenters are invited to propose steps that the Commission may take to further minimize any significant economic impact on small entities. When considering proposals made by other parties, commenters are invited to propose significant alternatives that serve the goals of these proposals.

Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

40. None.

B. Paperwork Reduction Act Analysis

41. This document contains no proposed new or modified information collection requirements. Accordingly, the Commission does not need to seek comment from the general public and OMB on any information collection requirements contained in this document, as required by PRA, nor does the Commission seek specific comment on how it might “further reduce the information collection

burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002.

C. Ex Parte Presentations

42. The proceeding this document initiates shall be treated as “permit-but-disclose” proceedings in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

D. Comment Filing Procedures

43. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing

System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties that choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

44. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

E. Regulatory Flexibility Analysis

45. As required by the Regulatory Flexibility Act of 1980, see 5 U.S.C. 604, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. Written public comments are requested in the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this document, as set forth on the first page of this document, and have a separate and distinct heading designating them as responses to the IRFA.

IV. ORDERING CLAUSES

46. Accordingly, IT IS ORDERED that pursuant to sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, this Notice of Proposed Rulemaking IS ADOPTED.

47. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

48. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and interested parties may file reply comments on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

List of Subjects in 47 CFR Part 11

Radio, Television, Emergency alerting.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,
Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 11 to read as follows:

PART 11 – EMERGENCY ALERT SYSTEM (EAS)

1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g) and 606.

2. Amend § 11.31 by:

a. In the table in paragraph (e), adding entries in alphabetical order under “State and Local Codes (Optional)” for “Extreme Wind Warning”, “Storm Surge Watch”, and “Storm Surge Warning”; and

b. In the table in paragraph (f), revising the entries for ANSI Nos. 75 and 77 and the footnote to the table.

The additions and revisions read as follows:

§ 11.31 EAS protocol.

* * * * *

(e) * * *

Nature of activation	Event codes
National Codes (Required):	
* * * * *	
State and Local Codes (Optional):	
* * * * *	
Extreme Wind Warning	EWW.
* * * * *	

Storm Surge Watch	SSA.
Storm Surge Warning	SSW.
* * * * *	

* * * * *

(f) * * *

ANSI No.

* * * * *

State:

* * * * *

Offshore (Marine Areas)¹:

* * * * *

Western North Atlantic Ocean, and along U.S. East Coast, south of Currituck Beach Light, NC, following the coastline to Ocean Reef, FL, including the Caribbean	75
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Gulf of Mexico, and along the U.S. Gulf Coast from the Mexican border to Ocean Reef, FL	77
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* * * * *

¹ The numbers assigned to the offshore marine areas listed in this table are not described under the ANSI standard, but rather are numeric codes that were assigned by NWS.